SUPREME COURT, U. S.

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MICHAEL RODAK, JR

IN THE

Supreme Court of the United States

OCTOBER TERM, 1973

NO. 73-1783

LAWRENCE F. MONTICELLO,
Petitioner,

v.

CORINNE M. MONTICELLO,
Respondent,

PETITION FOR WRIT OF CERTIORARI TO THE COURT OF APPEALS OF MARYLAND

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PETITION FOR WRIT OF CERTIORARI TO THE COURT OF APPEALS OF MARYLAND

Petitioner prays that a Writ of Certiorari issue to review the judgment of the Court of Appeals of Maryland on February 26, 1974.

CITATION TO OPINION BELOW

The Opinion of the Court of Appeals of Maryland is reported as 271 Md. 168, (1974).

JURISDICTION

The jurisdiction of the Court is invoked pursuant to 28 U.S.C. Sec. 1257 (3). Petitioner not having asserted below a deprivation of rights secured by the Constitution but asserting them here, as the judgment of the Court of Appeals of Maryland was sufficient state action to deprive the Petitioner of his rights secured by the Constitution of the United States.

In the proceeding below, the Circuit Court for Harford County, sitting in Equity, modified the 1968 Decree of Divorce by terminating support for the second child of the parties as of July 1, 1973, on the ground that, having attained the age of eighteen, Chapter 651 of the Maryland Acts of 1973, (A. 15) reduced the age of majority to eighteen, which became effective on July 1, 1973, and required such support to end. The Respondent entered an Appeal to the Court of Special Appeals of Maryland on December 5, 1973, and the case, transferred to the Court of Appeals, was argued in that Court on January 15, 1974. On February 26, 1974, the Court of Appeals of Maryland, by its written opinion, reversed the Decree and remanded the case for entry of a Decree requiring your Petitioner to pay support for the second child until age twenty-one.

QUESTIONS PRESENTED

1. The Honorable Court below erred in applying Chapter 651 of the Maryland Acts of 1973 only prospectively and the

effect of such application is state impairment of a contract right guaranteed by Article I, Sec. 10, Clause 1 (A.16) of the Constitution of the United States.

2. The Honorable Court below erred in its application of Chapter 651 of the Maryland Acts of 1973 (A. 15) only prospectively and the effect of such application was to deny your Petitioner of his right to equal protection under the laws as guaranteed by the Fourteenth Amendment to the Constitution of the United States.

STATEMENT OF FACTS

The parties hereto were married by a religious ceremony on August 20, 1949. As a result of the marriage three children were born: namely, Vickey Monticello, Patty Monticello and Michael Monticello. As so often happen, this marriage developed problems, which ultimately led to a separation of the parties. Prior to the actual cessation of cohabitation, the parties entered into an agreement dated October 12, 1966 (A. 1-5). Subsequently, on October 14, 1968 the Circuit Court for Harford County, sitting in Equity, granted a decree of absolute divorce to the husband on the grounds of a voluntary separation (A. 6). The Agreement (A. 1-5) after the customary recitals, provided, among other things that:

> "7. The Husband agrees and the Wife shall have the care and custody of the three minor children, namely: Vickey Monticello, Patty Monticello and Michael Monticello, and the Husband shall pay Fifty ($50.00) Dollars per week for their support."

At the time of the hearing on the merits of the case the issue of child support was contested by the Wife, and after the taking of testimony, a decree of divorce was signed by Judge Albert P. Close which in part provided:

> "It is further adjudged, Ordered and Decreed that the Plaintiff, Lawrence F. Monticello, pay unto the Defendant, Corinne M. Monticello, for the support of the three (3) infant children, a sum payable weekly in total amount of Five Thousand ($5,000.00) Dollars yearly, with credit to be applied to it for the mortgage payments he now makes, together with the Defendant's increase in equity in the residence as a result of these mortgage payments made by the Plaintiff . . . " (A. 6).

On April 5, 1973, the Appellee below, in proper person, filed a Petition, asking for relief from the obligation for the support of Vicky, since she had attained the age of twenty-one on April 29, 1973, and also that the yearly support of the two remaining children be reduced proportionately.

On June 26, 1973, the Appellee below, in proper person, again filed a "Supplemental Petition" asking additionally that:

> "This Honorable Court recognize the emancipation of Patricia Monticello . . . upon attaining the age of eighteen years of age on February 22, 1973 (Reference House Bill 299 "Age of Majority", Sections 1, 4, 10, 136, 19, 28, 33, 52), effectively (sic) July 1, 1973."

After the taking of testimony, the Honorable Judge Albert P. Close rendered an opinion dated September 25, 1973 granting the Appellee's requested relief. (A. 7 – A.

13). Subsequently, on October 5, 1973 the Court signed a decree, modifying the decree of October 14, 1968 in accordance with his written Opinion (A. 13 – A. 14).

From the Order modifying the decree, an Appeal was taken by the Respondent herein by writ of certiorari to the Court of Special Appeals of Maryland and subsequently transferred to the Court of Appeals of Maryland, wherein the decree was reversed and the case remanded for entry of a decree requiring your Petitioner to pay support for Patricia Monticello in derogation of the expressed terms of the parties separation agreement and divorce decree.

REASONS FOR GRANTING THE WRIT

I.

THE COURT OF APPEALS OF MARYLAND WAS IN ERROR IN APPLYING CHAPTER 651 OF THE MARYLAND ACTS OF 1973 (A. 15-16) ONLY PROSPECTIVELY AND IN SO DOING FAILED TO LOOK AT THE EXPRESSED TERMS OF THE CONTRACT BETWEEN THE TWO PARTIES TO DETERMINE THE INTENT OF EACH AS TO THE CHILD SUPPORT, THE EFFECT OF WHICH WAS TO IMPAIR THE CONTRACT RIGHT OF THE PARTIES.

On the surface it would appear that, since the impairment of the contract right issue was not raised in the lower Court that this Honorable Court would not ordinarily review the decision. *Sherman v. U.S.*, 356 U.S. 369, 78 S. Ct. 819. Ordinarily, Appellant must adhere to the theory on which the

case was tried in the lower Court, *Quast v. U.S.*, 428 F. 2d 750. On the other hand, the case of *Frieze v. West American Insurance Company*, 190 F.2d 381, held that the consideration of new issues raised for the first time on Appeal is entirely discretionary. And in a more recent case, *Wiley v. U.S.*, 350 U.S. 994, 76 S.Ct. 543, the Court qualified this by providing for review of issues not presented below where there is some compelling or persuasive reason for such review in order to avoid an obvious miscarriage of justice.

Your Petitioner contends that there should be review in this Court of the decision of the Court of Appeals of Maryland on the issue of state impairment of contract rights. This is due to the compelling nature of the question presented and the far reaching implications that such a decision might have in Maryland and throughout the United States if Courts are allowed to look back into time, as the Court of Appeals did, over eight years, and read into a contract intent which the parties could have easily expressed in concrete terms, but failed so to do.

Neither did the Decree of Divorce expressly state the duration of the support payments, leaving the issue open for judicial modification of the support or legislative enactment such as Chapter 651 of the Maryland Acts of 1973 (A. 15-16) as to the meaning of the term "minor child or children". The effect of the latter, under the expressed terms of the contract in question, being to redefine minority and cause the obligation of your Petitioner under the contract as to the second child to cease.

The test of the constitutionality of state legislation affecting contracts is "whether . . . existing contractual

relations are diminished or existing obligations increased . . . " *Stentor Electric Mfg. Co. v. Klaxon Company*, 115 F.2d 268, 30 F. Supp. 425. Because of the cases stating that Court decisions comprise sufficient state action to deny Constitutional rights, the *Stentor* holding (supra) can be extended. Your Petitioner contends that it should be extended to the present case, since his obligation under the new Maryland Legislation ceased upon the child attaining age eighteen, absent language in the contract to the contrary, but the Court increased his obligation by their decision, causing the support to continue to age twenty-one, contrary to the implied terms of the contract.

The Maryland Courts have held that where a contract is plain as to its meaning, there is no room for construction and it must be presumed that the parties meant what they expressed, *Devereux v. Berger*, 253 Md. 264. Under the express terms of the parties agreement, set out in full in the Appendix, (A. 1 – A.5),

> "7. The Husband and Wife shall have the care and custody of the minor children, namely: Vicky Monticello, Patty Monticello and Michael Monticello and the Husband shall pay Fifty ($50.00) dollars per week, for their support."

As this Honorable Court can clearly see, the parties expressed their intent very clearly in that the Husband was to support his "minor children" (emphasis added) then and his "minor children" (emphasis added) at the present. Presently, under Maryland law, minor children, infants, and minority have been redefined to mean persons under eighteen years of age. The Petitioner herein at the present has only one minor

child and his obligation under the contract cannot be increased to support more than this one by legislative act or judicial decree.

The Maryland Court of Appeals stated in their opinion that the Legislative intent of Article I, Section 24 of the Maryland Annotated Code was only to apply the law prospectively. It is your Petitioner's firm belief that in providing that the law does not affect any prior "court decree, trust, deed or other instrument in effect prior to the effective date of this Act," as set out in Chapter 651, Section 51 of the Maryland Acts of 1973, as codified in the Maryland Code (1957, 1968 Repl. Vol. 1973 Cum. Supp.) Art. 1, Sec. 24 (A. 14-16) the Maryland legislature did not intend, by this language, to impair any contract rights arising under any separation agreements prior to the Act. On the other hand, if there was such an intention on the part of the legislature, it is clearly an unconstitutional exercise of discretion.

II.

YOUR PETITIONER ALSO RESPECTFULLY CONTENDS THAT THE HONORABLE COURT BELOW ERRED IN ITS APPLICATION OF CHAPTER 651 OF THE MARYLAND ACTS OF 1973 ONLY PROSPECTIVELY, THEREBY EFFECTIVELY DENYING YOUR PETITIONER OF HIS RIGHT TO EQUAL PROTECTION UNDER THE LAW AS GUARANTEED BY THE FOURTEENTH AMENDMENT OF THE CONSTITUTION OF THE UNITED STATES. (A. 16).

The Application of the Act solely prospectively, in effect, relieves those Husbands, who did not have the foresight to

enter into an agreement with their wives prior to the enactment of Chapter 651 of the Maryland Acts of 1973, of their obligation to support those of their children attaining age eighteen after the passage of the law lowering the age of majority. While, on the other hand, those Husbands, such as your Petitioner, who had an agreement, are obligated to support their children who attain age eighteen after the effective date of the Act. Thus, this imposes a discriminatory obligation on certain persons of a class while at the same time relieving others in the same class of their obligation.

This contention is precisely what the Court was saying in the *Application of Brewer*, 430 P. 2d 150 (1967) when it held that,

> "To make legislation prospective in operation only satisfies constitutional requirements of equal protection so long as the law in operating prospectively doesn't invidiously discriminate between different classes of persons."

It has been held in several cases, that Judicial decisions comprise sufficient state action to deny rights guaranteed under the Constitution of the United States. *Shelley v. Kraemer*, 68 S.Ct. 836, 334 U.S. 1., *Tribune Review Publishing Co. v. Thomas*, 120 F. Supp. 362.

State action which is referred to in the Fourteenth Amendment, Section One, refers to exertion of state power in all forms and when the effect of that action is to deny rights subject to the protection of this Amendment, it is the obligation of the United States Supreme Court to enforce the Constitutional commands, *Shelley v. Kraemer*, supra. In *Tribune Review Publishing Co. v. Thomas*, supra, the Court

went on to say that the prohibition of the Fourteenth Amendment extends to all action of the state denying equal protection of the laws, whether it be action by the legislative, executive, or judicial branch of the State government. This was re-emphasized in *Voight v. Webb*, 47 F. Supp. 743.

Your Petitioner would respectfully reiterate that the Court of Appeals of Maryland, in its decision, did invidiously discriminate against him and all those Husbands who were parties to agreements prior to the enactment of the new Act, who had agreed only to support their minor children and are still bound to support those children who are no longer minors as defined by the Act.

CONCLUSION

As shown by the aforementioned cases, the Court of Appeals of Maryland, by their decision, imposed an obligation on your Petitioner not theretofore expressed or implied in the agreement between he and his wife. Had the parties wanted the support to continue to a stated age, they could have so expressed their intent, but failing in this, they left themselves open to changing legislation, which is the only intention that can be gleaned from their agreement and decree. And, the legislature, in providing only for prospective application, did not intend to impair or increase existing obligations under prior agreements.

Furthermore, the Court freed those Husbands, who had no contracts with their Wives, from supporting their children who had attained age eighteen by the effective date of the Act, while imposing on those Husbands with an agreement an additional obligation of supporting their children for an

additional three year period, merely on the basis of the presence or absence of an agreement.

Because of the far reaching implications and effects on other types of contracts of such a decision and because most states in the United States will have identical problems arising under their own "Age of Majority" laws, this Court should take a close look at what the Court of Appeals of Maryland has done, in possibly setting a precedent which would encourage other Courts to impair contract rights and deny equal protection of the laws to citizens of the United States.

Wherefore, your Petitioner prays that the Supreme Court of the United States issue a Writ of Certiorari to the Court of Appeals of Maryland to review the decision of said Court in this matter.

Respectfully submitted,

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A. 1

APPENDIX

SEPARATION AGREEMENT
dated 10/5/66

THIS AGREEMENT, Made this 5th day of October, 1966, by and between LAWRENCE F. MONTICELLO, of the first part, hereinafter sometimes called "Husband", and CORINNE M. MONTICELLO, of the second part, thereinafter sometimes called "Wife" witnesseth as follows:

WHEREAS, the parties hereto intermarried on the 20 day of August, 1949 in Houghton County, Michigan by a minister of the gospel.

WHEREAS, unfortunate differences have arisen that render it inadvisable and impossible for the parties hereto to live together as Husband and Wife any longer, and they are entering into this voluntary separation as of 1 August 1966; and

WHEREAS, the parties desire to enter into an agreement regarding personal and property rights as authorized by Chapter 220 of the Act of 1931 of the General Assembly of Maryland;

NOW, THEREFORE, in consideration of the premises, promises and agreements herein contained and the sum of One ($1.00) Dollar paid by each party to the other, the receipt of which is hereby acknowledged, the parties mutually covenant and agree as follows:

1. The Husband does hereby

a. Release the Wife and her estate now and hereafter acquired from any and all claims of any nature of kind now

existing or hereafter arising by way of dower, curtesy, or thirds of halves, or as surviving widower under the laws of the State of Maryland or any other jurisdiction or otherwise, arising because of the fact that the said parties are or were at any time Husband and Wife.

b. Agree that he will, without further consideration execute such instrument as may be necessary or proper, or in her opinion desirable (but without expense to him), to waive his interest as such husband in connection with any sale, mortgage or lease of any real or leasehold property owned by her or in which she has any right, title or interest, if his joinder in such instrument be requested by her; and in the event that she is judicially declared insane, or dies, that he will and does release unto her heirs, executors, administrators or assigns, or both committee, all rights in or claims against her estate, both real or personal, nor or hereafter owned, except such rights or claims against the same as are created by this agreement or are specifically given to him under the terms of his Wife's Last Will and Testament.

2. The Wife does hereby

a. Agree to release the Husband and his estate now and hereafter acquired, from any and all claims of any nature or kind now existing, or hereafter arising, by way of dower, curtesy or thirds or halves or as surviving Wife under the Laws of the State of Maryland or any other jurisdiction or otherwise arising because of the fact that the said parties are or were at any time Husband and Wife.

b. Agree that she will without any further consideration unite with the Husband in the execution of any instrument necessary or proper or in his opinion desirable (but without expense to her) to effect a waiver of her interests as Wife in connection with any sale, mortgage or release of any real or leasehold property owned by him or in which he has any rights, title or interest, if her joinder in such

instrument be requested by him, and in the event that he be judicially declared insane, or dies, that she does and will release unto his heirs, executors, administrators or assigns, or his committee, all rights in or claims against his estate both real and personal, now or hereafter owned except such rights or claims as are specifically given to her under the terms of the Husband's Last Will and Testament.

c. Agree to release and discharge her husband from all other and further obligations to pay for her support and maintenance and will make no claim for alimony, maintenance or support for herself or counsel fee.

3. That each of the parties hereto agrees that in the event of the death of the other the surviving party will waive all rights to letters of administration to which such survivor might be entitled, and that each will permit any Will of the other to be probated and letters testamentary to be taken out by any person or corporation therein named as executor without opposition.

4. It is expressly stipulated that neither of the parties hereto waives or condones any cause for divorce which either may have or which either may hereafter have against the other, and this Agreement shall not be a bar to any action for divorce, either a vinculo matrimonii or a mensa et thoro, whether the cause for divorce existed at the time or arose prior or subsequent to the time of the execution of this agreement.

5. Any property now owned or hereafter acquired by either party shall not be affected by the Community Property Laws of any State and agrees to execute such deeds, releases or other instruments as may be necessary from time to time to bar, release or extinguish any rights which he or she may have by virtue of such Community Property Laws.

6. The parties hereto agree that the home presently owned on Cherry Road, Edgewood, Maryland, shall remain

titled in the names of the Husband and Wife unless by mutual agreement it is to be sold. The Husband agrees that he will make the mortgage payments which include the taxes and insurance and in addition thereto the Husband agrees to pay the water, light and heat bills. Whenever the home is sold, the parties agree that the mortgage shall be paid and the equity divided equally between them.

7. The Husband agrees and the Wife shall have care and custody of the minor children, namely: Vicky Monticello, Patty Monticello and Michael Monticello and the Husband shall pay Fifty (50.00) Dollars per week for their support.

8. The Husband agrees to continue the hospital insurance on the Wife and the children until such time as an absolute divorce may occur, at which time the Wife's name will be eliminated from the policy.

9. The Wife agrees that the Husband shall have the right of visitation with the children one (1) evening during the week from 6:30 P.M. to 9:30 P.M. and every Saturday or Sunday for the entire day with the right to have the children for the weekend at least once a month; all visitation predecated upon reasonable notice.

10. The Wife agrees to take her name off the title to the camper truck and the Husband agrees to remove his name from the title of the 1962 Dodge both of which will be done at the time of the signing hereof.

11. The Wife agrees not to charge any purchases in the future against the Husband's credit without his prior knowledge.

12. It is further agreed that the Husband may claim the Wife and Children as sole exemptions on his income tax return and if the Husband desires to file a joint return, the Wife agrees to join therein.

And to these covenants and promises the parties hereto severally bind themselves their heirs, executors, administrators and assigns.

IN WITNESS WHEREOF, the parties hereto have set their hands and seals the day and year first above written.

WITNESS:

Alfred L. Brennan — Lawrence F. Monticello (SEAL)

(Illegible) — Corinne M. Monticello (SEAL)

STATE OF MARYLAND, BALTIMORE COUNTY, to wit:

I HEREBY CERTIFY, That on this 5th day of October, 1966, before me, the subscriber, a Notary Public of the State of Maryland, in and for Baltimore County, aforesaid, personally appeared LAWRENCE F. MONTICELLO, party to the foregoing Agreement, and acknowledged the aforegoing instrument of writing to be his act and deed.

AS WITNESS my hand and Notarial Seal.

Alfred L. Brennan
Notary Public.

STATE OF MARYLAND, HARFORD COUNTY, to wit:

I HEREBY CERTIFY, That on this 12th day of October, 1966 before me, the subscriber, a Notary Public of the State of Maryland, in and for Harford County, aforesaid, personally appeared CORINNE M. MONTICELLO, party to the foregoing Agreement, and acknowledge the aforegoing instrument of writing to be his act and deed.

AS WITNESS my hand and Notarial Seal.

Beverly K. Grafton
Notary Public.

DECREE (entered 10/14/68)

, The above cause, coming on for hearing on the Bill of Complaint of Lawrence F. Monticello, testimony having been taken on August 5th, 1968 and counsel for the respective parties having been heard, the proceedings were by the Court read and considered.

IT IS, THEREUPON, the 14th day of October, 1968, by the Circuit Court for Harford County:

ORDERED AND DECREED that the above named Plaintiff, Lawrence F. Monticello, be, and he is, hereby divorced A VINCULO MATRIMONII from the Defendant, the said Corinne M. Monticello, and

IT IS FURTHER ADJUDGED, ORDERED AND DECREED, that the Guardianship and Custody of Vicky Monticello, Patty Monticello and Michael Monticello, infant children of the parties hereto, be and it is hereby awarded unto the Defendant, Corinne M. Monticello, with visitation rights to the father, Lawrence F. Monticello, to visit the children one evening during the week from 6:30 p.m. until 9:30 p.m. and every Saturday or Sunday for the entire day and with the right to have the children for the weekend overnight at least once a months; all visitations predicated upon reasonable notice; subject to the continuing jurisdiction of this Court; and

IT IS FURTHER ADJUDGED, ORDERED AND DECREED that the Plaintiff, Lawrence F. Monticello, pay unto the Defendant, Corinne M. Monticello, for the support of the three (3) infant children, a sum payable weekly in total amount of five thousand ($5,000.00) dollars yearly, with credit to be applied to it for the mortgage payments he now makes, together with the Defendants increase in equity in the residence as a result of these mortgage payments made by the Plaintiff. In the event the Defendant moves from the residence, the Plaintiff will receive credit only for such increases of the Defendants equity as may result from his continued payments on the mortgage indebtedness; subject to further Orders of this Court; and

IT IS FURTHER ADJUDGED, ORDERED AND DECREED that the Plaintiff, Lawrence F. Monticello, pay a counsel fee of three hundred fifty (350.00) dollars unto the Defendant's Attorney, E. Edward Toscani, and that the Plaintiff pay the cost of these proceedings.

Albert P. Close,
(SEAL) JUDGE

OPINION
9/25/73

In this case, Petitioner is the father of three children, ages twenty-one (21), eighteen (18) and twelve (12) years. Petitioner was divorced from his wife, the Defendant in this case, by a decree of divorce a vinculo on October 14, 1968. Prior to the divorce decree, a separation agreement was signed between the parties, which provides as follows:

> "7. The husband and the wife shall have the care and custody of the minor children, namely: Vicky Monticello, Patty Monticello and Michael Monticello and the husband shall pay Fifty ($50.00) dollars per week for their support."
>
> The final divorce decree modified this to provide as follows:
>
> "... It is further adjudged, ordered and decreed, that the Plaintiff, Lawrence F. Monticello pay unto the Defendant, Corinne M. Monticello, for the support of the three (3) infant children, a sum payable weekly in total amount of five thousand ($5,000.00) dollars yearly, . . . , subject to further orders of this court: . . . ".

Plaintiff in his petition now contends that he should (1) be relieved of support of the eldest child, Vicky, who reached the age of twenty-one on April 29, 1973 and (2) be relieved of support of the second child, Patricia, who reached the age of eighteen on February 22, 1973; (3) have his total payments reduced accordingly to $800.00 a year in support of the third and youngest child.

Petitioner bases his second contention on the effect of Chapter 651, of the Laws of Maryland passed at the Regular 1973 Session of the General Assembly of Maryland, which

went into effect June 1, 1973, lowering the age of majority from twenty-one to eighteen. He argues that because of this change, his second oldest child is now legally an adult and that he is therefore under no legal obligation to provide for her support or education.

By statute, the father and mother are the joint natural guardians of a minor child and are jointly and severally charged with the support, care, nurture, welfare and education of that child. Article 72A, Section 1, The Annotated Code of Maryland, 1970 Replacement Volume.

Prior to July 1, 1973, the parents' legal duty to support a child ceased when he arrived at the age of majority, which was twenty-one. At common law the duty to support applied only to minor children. 59 Am. Jur. 2d, Parent and Child, Section 102, p. 201. See also *Blumenthal v. Blumenthal*, 161 A.2d 137 (1960) (D.C. case). This duty was terminated even in the case of incompetent and/or disabled children when they reached the age of majority (*Bochert v. Bochert*, 45 A.2d 463, 184 Md. 586, 162 ALR 1078) (1946) until it was extended by statute. Article 27, Section 97, The Annotated Code of Maryland, 1971 Replacement Volume. If, therefore, it is determined that the age of 18 is now the age of majority, when children become adults, the obligation to support ceases.

The obligation to support could also be terminated by the emancipation of a child from the custody and control of the parents and from the obligation to render services to them. Emancipation could occur by several means, the most common of which were (1) marriage of the child and (2) having the child reach majority. 17 M.L.E. Parent and Child, Section 16, p. 347.

Chapter 651, enacted by the 1973 Regular Session of the Maryland Legislature, is more than just a broad general statement that the age of majority is to be eighteen years of

age. It is an attempt at a comprehensive, section-by-section revision of applicable code sections. Consistently throughout, the words "minor" and "child" as well as specific provisions for the age "twenty-one" were changed to read "eighteen". Some of the sections affected by this change are of specific relevance to the problem at issue and should be examined more closely.

Section 1 of Chapter 651 (new Section 21 of Article 1, Rules of Interpretation) reads:

> "(A) Except as otherwise specifically provided by statute, a person eighteen years of age or more is an adult for all purposes whatsoever and has the same legal capacity, rights, powers, privileges, duties, liabilities and responsibilities as prior to July 1, 1973, persons had at twenty-one years, and the 'age of majority' is hereby declared to be eighteen years."

This section goes on to further define the terms "adult", "of full age", "of legal age" as persons eighteen or older and "minors", as persons not yet 18. This presents us with a clear picture of the intent of the legislature and indicates that if any person over eighteen is to be considered *not* an emancipated, adult citizen for any purpose it must be done by legislative enactment.

Further, Section 4 (new Section 66H (a) of Article 16, Chancery, subtitle, Paternity Proceedings) provides that the legal obligation of support for an *illegitimate* child need only be maintained until the child reaches eighteen (unless the child is physically or mentally unable to provide for itself).

For *legitimate* children, the criminal penalty for non-support,neglect, etc., provided in Article 27, Section 88 (b), is changed by Section 13 of the new measure to apply only to failure to support and maintain children under the age of eighteen.

The single statutory exception provided for in this Chapter is in Section 41, which applies to Article 88A of the Annotated Code of Maryland, 1969 Replacement Volume, 1972 Supplement, pertaining to public assistance to dependent children. It extends the period covered by welfare services for age 18 to age 21 and also provides that persons over eighteen, but attending an approved college or vocational school, shall continue to be considered as dependent children but only for purposes of receiving State assistance. It seems clear that this exception is of very narrow and limited scope and the measure indicates that this exception was made to keep the excepted programs within Federal standards.

In the instant case, the second child wishes to have support continued in order that she can attend college. The Maryland Court of Appeals has held repeatedly that where a child is capable of attending college and where a college education would normally be afforded as an incident of the station in life of the family, the father may be compelled to contribute if he is financially able to do so. *Rhoderick v. Rhoderick*, 257 Md. 354 (1969); *Smith v. Smith*, 227 Md. 355 (1961). This obligation, however, like all support obligations, *terminates* when the child reaches his majority. *Smith v. Smith, supra,* at p. 361, cited in *Rhoderick, supra,* at 368-369. As the above examination and discussion on Chapter 651 indicates, the Maryland Legislature has seen fit to reduce the age of majority to eighteen and nothing in that measure or any case law would indicate that contribution to college expenses presents an exception to the general policy. Therefore, Petitioner should be relieved of any obligation whatsoever to support his children over the age of eighteen.

It should be noted that Section 51 provides that:

"... the provisions of this Act shall be construed only prospectively and shall not be applied or interpreted to have any effect upon or application to

> any event or happening occurring prior to the effective date of this Act, or to any gift made under the Uniform Gift to Minors Act prior to that date, or to any Court decree, trust, will, deed or other instrument in effect prior to the effective date of this Act."

The purpose of this section is to provide that the age of majority change is not retroactive. This would mean that any act or event such as a contract entered into by a person over eighteen but under twenty-one, before July 1, would be governed by the previous age of majority rule. Likewise, a Court could not order the reimbursement of support payments made for a child between eighteen and twenty-one before July 1, merely because under the new law the obligation to support no longer exists. To apply the new age of majority to the bare agreement and decree in this case is not a retrospective construction of Chapter 651.

If either the decree or separation agreement in this case had specifically provided that support was to continue until the children reached twenty-one, or that a college education was to be provided, Chapter 651 would not apply. Such is not the case. What we have in the instant case is merely a bare decree ordering support. If this Court were to order that support continue on the strength of such a decree, it would create the anomalous situation of imposing a greater responsibility on parents who, as of July 1, 1973, are divorced and living under a bare order to support their children, then we impose on parents *not* divorced and living with their children in a normal home situation. If the Petitioner had specifically signed an agreement to support the children until age twenty-one, or to provide for a college-education or even if the final decree had provided such, he would be bound, both by the effect of Section 51 and probably by the principles of ordinary contract law.

It should also be noted that support orders are subject to modification by the Court in the exercise of its discretion for

good cause shown. *Bebermeyer v. Bebermeyer*, 241 Md. 72, 215 A.2d 463 (1965), *Wooddy v. Wooddy*, 258 Md. 224, 265 A.2d 467 (1970). It may be logically argued that a Court may legitimately amend a bare decree such as this one on the grounds that the "right" to support no longer exists after the child reaches eighteen, if this Court's interpretation of Chapter 651 is correct, just as it could have done previously when the child reached 21.

Defendant cites as authority in point the case of *Vicino v. Vicino*, 30 Conn. Supp. 49, 298 A.2d 241 (1972), which held that a support decree entered before the lowering of the age of majority in Connecticut to eighteen was to continue in effect until the child reached twenty-one. It should be noted, however, that Section 83 of the Connecticut Law (Public Acts 1972, No. 127) which corresponds to Section 51 of Chapter 651 is much broader in scope than its Maryland counterpart. It provides:

> "Nothing in this act shall impair or affect any act done, offense committed or right accruing, accrued or acquired, or an obligation, liability, penalty, forfeiture or punishment incurred prior to the effective date of this act, and the same may be enjoyed, asserted and enforced, as fully and to the same extent and in the same manner as they might under the laws existing prior to said date, and all matters civil or criminal pending on said date or instituted thereafter for any act done, offense committed, right accruing, accrued, or acquired, or obligation, liability, penalty, forfeiture, or punishment incurred prior to said date may be continued or instituted under and in accordance with the provisions of the law in force at the time of the commission of said act done, offense committed, right accruing, accrued, or acquired, or obligation, liability, penalty, forfeiture or punishment incurred."

The Maryland law is much narrower in scope, applying only to prior decrees, acts, gifts, trusts, wills, deeds, but not covering pre-existing rights and obligations. It was on the basis of this section that the Connecticut Court reached its conclusion. *Infra,* p. 242-243. Even with this broader provision, however, this Court has serious doubts as to the correctness of the Connecticut decision. A separate memorandum with regard to the third child's support, fees and costs will be filed by the Court.

September 25, 1973 ALBERT P. CLOSE,
Judge

cc—
Robert R. Bright, Esq.
Mr. Lawrence F. Monticello.

DECREE FILED 10/5/73,
modifying Decree of October 14, 1968

The above cause, coming on for hearing on the Petition of Lawrence F. Monticello, Plaintiff, for a reduction in support payments for his minor children and on The Answer and Cross-Petition of Corinne M. Monticello, Defendant, for an increase in such support payments and having been heard, the proceedings were by the Court read and considered.

IT IS, THEREUPON, the 5th day of October, 1973 by the Circuit Court for Harford County:

ORDERED, ADJUDGED and DECREED, that the Decree of this Court, dated October 14, 1968, be and the same hereby is modified in regard to the support provisions for the minor children of the parties as hereinafter provided;

FURTHER ORDERED, ADJUDGED and DECREED, that support payments for Vickey Monticello, daughter of the

parties, be and the same hereby are terminated effective as of April 29, 1973 by virtue of said child having attained the age of twenty-one on said date;

FURTHER ORDERED, ADJUDGED and DECREED, that support payments for Patricia Monticello, daughter of the parties who attained the age of eighteen on February 22, 1973, be and the same hereby are terminated effective July 1, 1973 by virtue of the effect of Chapter 651, Maryland Acts of 1973, reducing the age of majority to eighteen;

FURTHER ORDERED, ADJUDGED and DECREED, that the Plaintiff, Lawrence F. Monticello, pay unto the Defendant, Corinne M. Monticello, for the support of Michael Monticello, minor child of the parties, the sum of Fifty-Five ($55.00) Dollars per week, effective forthwith; and

FURTHER ORDERED, ADJUDGED and DECREED, that the Plaintiff, Lawrence F. Monticello, pay a counsel fee of Four Hundred and Fifty ($450.00) Dollars unto the Defendant's attorney, Robert R. Bright, and that Plaintiff pay the costs of these proceedings.

Albert P. Close,
Judge

ANNOTATED CODE OF MARYLAND
ARTICLE 1, SECTION 24

Age of majority; meaning of "adult," "of legal age" and "minor."

(a) Except as otherwise specifically provided by statute, a person eighteen years of age or more is an adult for all purposes whatsoever and has the same legal capacity, rights, powers, privileges, duties,

liabilities, and responsibilities as prior to July 1, 1973, persons had at twenty-one years of age, and the "age of majority" is hereby declared to be eighteen years.

(b) The terms "adult," "of full age," or "of legal age" refer to persons who have attained the age of eighteen years.

(2) The term "minor," as it pertains to legal age and capacity, refers to persons who have not attained the age of eighteen years. (1973, ch. 651, Sec. 1.)

LAWS OF MARYLAND 1973
Chapter 651

SECTION 1. BE IT ENACTED BY THE GENERAL ASSEMBLY OF MARYLAND, That new Section 21 be and it is hereby added to Article 1 of the Annotated Code of Maryland (1968 Replacement Volume), title "Rules of Interpretation," to follow immediately after Section 20 thereof, and to read as follows:

21.

(A) EXCEPT AS OTHERWISE SPECIFICALLY PROVIDED BY STATUTE, A PERSON EIGHTEEN YEARS OF AGE OR MORE IS AN ADULT FOR ALL PURPOSES WHATSOEVER AND HAS THE SAME LEGAL CAPACITY, RIGHTS, POWERS, PRIVILEGES, DUTIES, LIABILITIES, AND RESPONSIBILITIES AS PRIOR TO JULY 1, 1973, PERSONS HAD AT TWENTY-ONE YEARS OF AGE, AND THE "AGE OF MAJORITY" IS HEREBY DECLARED TO BE EIGHTEEN YEARS.

(B) (1) THE TERMS, "ADULT", "OF FULL AGE", OR "OF LEGAL AGE" REFER TO PERSONS WHO HAVE ATTAINED THE AGE OF EIGHTEEN YEARS.

(2) THE TERM "MINOR", AS IT PERTAINS TO LEGAL AGE AND CAPACITY, REFERS TO PERSONS WHO HAVE NOT ATTAINED THE AGE OF EIGHTEEN YEARS.

SECTION 51. AND BE IT FURTHER ENACTED, That the provisions of this act shall be construed only prospectively and shall not be applied or interpreted to have any effect upon or application to any event or happening occurring prior to the effective date of this Act,or to any gift made under the Uniform Gift to Minors' Act prior to that date, or to any court decree, trust, will, deed or other instrument in effect prior to the effective date of this Act.

THE CONSTITUTION OF THE UNITED STATES
ARTICLE 1, Section 10, Clause 1

No state shall enter into any Treaty, Alliance, or Confederation; grant Letters of Marque and Reprisal; coin Money; emit Bills of Credit; make any Thing but gold and silver Coin a Tender in Payment of Debts; pass any Bill of Attainder, ex post facto Law, or Law impairing the Obligation of Contracts, or grant any Title of Nobility.

THE CONSTITUTION OF THE UNITED STATES
AMENDMENT XIV, Section 1

All persons born or naturalized in the United States, and subject to the jurisdiction thereof, are citizens of the United States and of the State wherein they reside. No State shall make or enforce any law which shall abridge the privileges or immunities of citizens of the United States; nor shall any State deprive any person of life, liberty, or property, without due process of law; nor deny to any person within its jurisdiction the equal protection of the laws.

A. 17

MANDATE

COURT OF APPEALS OF MARYLAND

No. 244, September Term, 1973

Corinne M. Monticello
v.
Lawrence F. Monticello

Appeal from the Circuit Court for
Harford County pursuant to certiorari
to the Court of Special Appeals.

Filed: December 5, 1973.

February 26, 1974: Decree reversed, case remanded for entry of decree conformable to views herein expressed; costs to be paid by appellee. Opinion by Singley, J.

STATEMENT OF COSTS:

In Circuit Court:

Record	$20.00
Stenographer's Costs	–

In Court of Appeals:

Filing Record on Appeal (Court of Special Appeals)	$20.00
Printing Brief for Appellant	213.20
Reply Brief	
Portion of Record Extract–Appellant	
Appearance Fee–Appellant	10.00
Printing Brief for Appellee	NOT SUPPLIED
Portion of Record Extract–Appellee	
Appearance Fee–Appellee	10.00

STATE OF MARYLAND, ss:

I do hereby certify that the foregoing is truly taken from the records and proceedings of the said Court of Appeals.

In testimony whereof, I have hereunto set my hand as Clerk and affixed the seal of the Court of Appeals this twenty-eighth day of March, , 1974.

James H. Norris, Jr.
Clerk of the
Court of Appeals of
Maryland.

Costs shown on this Mandate are to be settled between counsel and *NOT THROUGH THIS OFFICE.*

OPINION BY JUDGE SINGLEY
Filed February 26, 1974

**Barnes, J., participated in the hearing and in the conference of the case in regard to its decision and in the adoption of the opinion but had resigned from the Court prior to the filing of the opinion.*

By order entered 5 December 1973, we directed that the writ of certiorari issue to the Court of Special Appeals in this case, to the end that the case should be docketed in this Court.

Chapter 651 of the Laws of 1973 (the Act) made sweeping changes in respect of the age of majority in Maryland. Section 1 of the Act, now codified as Maryland Code (1957, 1968 Repl. Vol., 1973 Cum. Supp.) Art. 1, § 24 provides:

> "(a) Except as otherwise specifically provided by statute, a person eighteen years of age or more is an adult for all purposes whatsoever and has the same legal capacity, rights, powers, privileges, duties, liabilities, and responsibilities as prior to July 1, 1973, persons had at twenty-one years of age, and the 'age of majority' is hereby declared to be eighteen years.
>
> "(b)(1) The terms 'adult,' 'of full age,' or 'of legal age' refer to persons who have attained the age of eighteen years.
>
> "(2) The term "minor,' as it pertains to legal age and capacity, refers to persons who have not attained the age of eighteen years."

Section 52 of the Act provides that the Act shall take effect 1 July 1973. Section 51 stipulates:

> "That the provisions of this Act shall be construed only prospectively and shall not be applied or interpreted to have any effect upon or application to any event or happening occurring prior to the effective date of this Act, or to any gift made under the Uniform Gift to minors' Act prior to that date, or to any court decree, trust, will, deed or other instrument in effect prior to the effective date of this Act."

The question posed by this case is what effect the Act has on that part of a divorce decree regulating custody and child support which had been entered on 14 October 1968 by the Circuit Court for Harford County.

The underlying facts can be briefly recounted. The appellant, Corinne M. Monticello, and the appellee, Lawrence F. Monticello, were married on 20 August 1949. Three children, Vicky, Patricia (Patty), and Michael Monticello, were born of the marriage. In August, 1966, Mr. and Mrs. Monticello agreed to separate and in October of that year entered into an agreement covering property rights, custody, visitation rights, and child support.

Less than two years later, Mr. Monticello sued Mrs. Monticello for divorce. The decree entered in October, 1968 which granted him a divorce a vinculo matrimonii contained a paragraph which was at variance with the corresponding provision of the separation agreement.[1] The decree provided, in part:

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[1] The provisions of the separation agreement were less generous than the decree with respect to child support.

"IT IS FURTHER ADJUDGED, ORDERED AND DECREED, that the Guardianship and Custody of Vicky Monticello, Patty Monticello and Michael Monticello, infant children of the parties hereto, be and it is hereby awarded unto the Defendant, Corinne M. Monticello . . .

"IT IS FURTHER ADJUDGED, ORDERED AND DECREED that the Plaintiff, Lawrence F. Monticello, pay unto the Defendant, Corinne M. Monticello, for the support of the three (3) infant children, a sum payable weekly in total amount of five thousand ($5,000.00) dollars yearly, with credit to be applied to it for the mortgage payments he now makes, together with the Defendant's increase in equity in the residence as a result of these mortgage payments made by the Plaintiff. In the event the Defendant moves from the residence, the Plaintiff will receive credit only for such increases of the Defendant's equity as may result from his continued payments on the mortgage indebtedness; subject to further Orders of this Court . . .

* * * * * * *"

In April, 1973, when Vicky, the oldest of the Monticello children, attained age 21, Mr. Monticello petitioned the court for a one-third reduction in the annual support allowance of $5,000.00. Mrs. Monticello answered, resisting the relief prayed. Monticello countered with a supplemental petition, filed on 26 June 1973, which repeated the reference to Vicky, and brought to the attention of the court the fact that his second child, Patricia, had attained age 18 on 22 February 1973, and would attain her majority on 1 July 1973, when the Act would become effective. He concluded by suggesting that support payments for Michael, the youngest of the children, be fixed at $800.00 per year.

From a decree which terminated support payments for Vicky at age 21; terminated support payments for Patricia on the effective date of the Act, and fixed support payments for Michael at $55.00 per week, Mrs. Monticello has appealed.

While the question here presented, or a variation of it, has been considered by our lower courts, the matter is one of first impression here, and we granted certiorari in order that uniformity of decision could be achieved.

At the outset, it should be emphasized that we are not dealing with a child support decree directing that payments be made *until* age 21, *see Muth v. Cullier,* Daily Record vol. 171, Nov. 17, 1973, at 6 (Cir. Ct., Montgomery Co. Nov. 8, 1973); *Sproston v. Sproston,* 8 Wash. App. 218, 505 P. 2d 479 (1973), but with a decree directing that payments be made for *infant* children, which may be equated with phrases like "minor" children, or "during infancy," or "during minority," or "until attaining majority," or "until age of majority."

In *Massey v. Massey,* Daily Record vol. 171, Nov. 2, 1973, at 3 (Cir. Ct. No. 2, Baltimore City Oct. 30, 1973), where there was a separation agreement, approved in the divorce decree,[2] directing that support payments continue until the children should "attain the age of majority," the court concluded that the support obligation continued until age 21, relying on both the intentions of the parties, and the fact that section 51 mandated prospective application of the Act. *Newton v. Newton,* Daily Record, vol. 172, Jan. 5, 1974, at 5 (Cir. Ct., Anne Arundel Co. Dec. 12, 1973, reached a similar result where a decree, which adopted the language contained in a voluntary separation agreement entered into by the parties, directed the payment of support for a minor child

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[2] The divorce decree approved the agreement, and, "in accordance therewith," ordered support payments for the "minor children."

and provided that payments continue until he "is emancipated or becomes self-supporting."[3]

If we were only concerned with the construction and interpretation of a separation agreement we would surely adopt the objective law of contracts, enunciated by this Court, speaking through Chief Judge Brune, in *Slice v. Carozza Properties, Inc.*, 215 Md. 357, 368, 137 A.2d 687, 693 91958):

> "As we turn to the authorities, we may note first that the theory of 'objective law' of contracts has been almost universally adopted by this time. The written language embodying the terms of an agreement will govern the rights and liabilities of the parties, irrespective of the intent of the parties at the time they entered into the contract, unless the written language is not susceptible of a clear and definite understanding, or unless there is fraud, duress or mutual mistake. *Ray v. Eurice*, 201 Md. 115, 93 A.2d 272 [(1952)]."

See also U.S.I.F. Triangle Towers Corp. v. Rockwood Dev. Co., 261 Md. 379, 384, 275 A.2d 487, 489-90 (1971).

We fail to see why a somewhat analogous approach should not be taken in the interpretation of a judicial decree, whether or not it supplants a prior agreement of the parties – that it is not so much a question of what the parties or what the court intended the decree to mean, but what a reasonable person in the position of the parties, or of the court,[4] would have thought it meant. *See Katz v. Pratt St. Realty Co.*, 257

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[3] While emancipation may result from other circumstances, *see* 59 Am. Jur. 2d *Parent and Child*, §93 (1971), the *Newton* court dealt with a son who had attained age 18.

[4] *See* Rosher v. Superior Court, 9 Cal.2d 556, 560, 71 P.2d 918, 920 (1937).

Md. 103, 120, 262 A.2d 540, 548 (1970); *Chesapeake Isle, Inc. v. Rolling Hills Dev. Co.*, 248 Md. 449, 453, 237 A.2d 1, 3 (1968); *Ray v. Eurice, supra,* 201 Md. at 127, 93 A.2d at 279.

As a consequence, we are prepared to hold that the use of phrases such as "infant" child, "minor" child, "during infancy," "during minority," "until attaining majority," or "until age of majority," in an agreement or in a decree relating to child support dated prior to 1 July 1973, must have meant support until attaining age 21, in the absence of a clear expression of contrary intent, since this is the only meaning which could reasonably have been within the contemplation of the parties at the time such an agreement was executed, or in a judge's mind when such a decree was entered. However, we do not decide whether this holding .... governs the interpretation of an agreement or decree which refers to "child" or "children," otherwise unidentified, or to a child by name, without further elaboration from which intent can be inferred.

Such a holding is not only consonant with the provisions of section 51, which direct that the Act be applied prospectively, but is consistent with the clear expression of legislative intent found in the Legislative Council's report to the 1973 General Assembly regarding the bill which later became the Act:

> "Item 14(1) is a comprehensive bill lowering the age of majority from twenty-one to eighteen years of age in all areas of the common law, in all sections and articles of the Annotated Code of Maryland, and in all counties of the State of Maryland. *There are two exceptions, however. First, the bill is prospective in effect; it clearly states that all decrees, trusts, deeds and other instruments in being on the effective date of July 1, 1973 will not be affected by this change.* The second exception concerns the law on alcoholic beverages, which is separately reported as

Item 14(2)." Report to the General Assembly of 1973, at 3 (1973) (emphasis supplied).

See also Wilner, *Family and Juvenile Law,* Md. B.J., January 1974, at 38, 39.

Results similar to that reached here may be found in *Baker v. Baker,* 80 Wash.2d 736, 498 P.2d 315 (1972);[5] in *Waldron v. Waldron,* 301 N.E.2d 167 (Ill. App. 1973); in *Vicino v. Vicino,* 30 Conn. Supp. 49, 298 A.2d 241 (Super. Ct., Hartford Co. 1972); and in a series of cases from Kentucky where the age of majority was lowered in 1964, *Kirchner v. Kirchner,* 465 S.W.2d 299 (Ky. 1971); *Collins v. Collins,* 418 S.W.2d 739 (Ky. 1967); *Wilcox v. Wilcox,* 406 S.W.2d 152 (Ky. 1966);[6] see also Springstun v. Springstun, 131 Wash. 109, 229 P. 14 (1924) (support decree directing payments "during the minority" of child, entered when age of majority was 18, held to have expired when child reached 18 despite prior passage of statute raising age of majority to 21); *Smith v. Smith,* 104 Kan. 629, 180 P.231 (1919) (statute raising age of majority from 18 to 21 not given retroactive

[5] *Compare Baker* with Sproston v. Sproston, 8 Wash. App. 218, 505 P.2d 479 (1973) (divorce decree provided for support payments until child reached 21).

[6] *Compare* these Kentucky cases *with* Young v. Young, 413 S.W.2d 887 (Ky. 1967) (where divorce decree made no mention of child support, after enactment of statute lowering age of majority from 21 to 18 court was without authority to order father to make support payments for two children over 18 years of age) *and Blackard v. Blackard,* 426 S.W.2d 471 (Ky. 1968) (no evidence that parties to a separation agreement, incorporated into a divorce judgment, intended that support payments continue after child reached 18); *see* also *Reed v. Reed,* 457 S.W.2d 4 (Ky. 1969), *motion to reopen judgment denied,* 484 S.W.2d 844 (Ky. 1972), *cert. denied,* 410 U.S. 931 (1973) (accord with Young v. Young, *supra).*

effect). *Contra, Parker v. Parker,* Tenn. , 497 S.W.2d 572 (1973); *Phelps v. Phelps,* 85 N.W. 62, 509 P.2d 254 (1973); *Mason v. Mason,* 84 N.W. 720, 507 P.2d 781 (1973); *Whitt v. Whitt,* Tenn. *490 S.W.2d 159 (1973); Shoaf v. Shoaf,* 282 N.C. 287, 192 S.E.2d 299 (1972); and *cf. Irby v. Martin,* 500 P.2d 278 (Okla. 1972); *State v. Kiessenbeck,* 167 Ore. 25, 114 P.2d 147 (1941) (statute raising age of majority from 18 to 21); *Rosher v. Superior Court,* 9 Cal.2d 556, 71 P.2d 918 (1937), *overruling Kendall v. Kendall,* 122 Cal. App. 397, 10 P.2d 131 (1932) (statute raising age of majority from 18 to 21). *See generally* Annot., 170 A.L.R. 222 (1947). Of all of the cases cited, it appears that only in *Vicino v. Vicino, supra,* did the statute in question explicitly prohibit retroactive application by adopting a provision similar to that contained in section 51 of the Act.[7]

It is true, as the chancellor noted below, that a decree for child support may be varied or modified by the court in the exercise of its sound discretion at any time because of a change in circumstances, *Wooddy v. Wooddy,* 258 Md. 224, 228, 265 A.2d 467, 470 (1970); *Seltzer v. Seltzer,* 251 Md. 44, 45, 246 A.2d 264, 265 (1968), whether or not there has been an agreement between the parties, *Price v. Price,* 232 Md. 379, 383, 194 A.2d 99, 101 (1963). *See* Code (1957), 1973 Repl. Vol., 1973 Cum. Supp.) Art. 16, §25 (divorce a mensa et thoro); § 28 (power to modify support agreement); § 66(a) (equity has original jurisdiction in cases relating to child support). The exercise of this jurisdiction is ordinarily limited, however, to revisions of agreements or decrees which are made in the best interests of the children because of a change in circumstances, *see, e.g., Rothschild v. Strauss,* 257 Md. 396, 263 A.2d 511 (1970), and in the usual case, is

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[7] N.M. Stat. Ann. §13-13-1(B) (1973 Supp.) specifically prohibits retroactive application only with respect to gifts made prior to 18 June 1971 under the Uniform Gifts to Minors Act.

confined to a change in the amount, rather than the duration, of the support.

DECREE REVERSED, CASE REMANDED FOR ENTRY OF DECREE CONFORMABLE TO VIEWS HEREIN EXPRESSED; COSTS TO BE PAID BY APPELLEE.